

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Zurab Kakushadze,)
A46-132-266)
Plaintiff,)) 07 Civ. 8338 (DCF)
-against-)) ECF Case
MICHAEL CHERTOFF, SECRETARY OF THE))
DEPARTMENT OF HOMELAND SECURITY))
and))
ROBERT MUELLER, DIRECTOR,))
FEDERAL BUREAU OF INVESTIGATION))
Defendants.))

**MEMORANDUM OF LAW
IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

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I. The Defendants have not proposed any substantial jurisdictional issues in their Motion to Dismiss, which should therefore be denied.	2
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III. USCIS has a duty to adjudicate this case, and allowing it to remain unadjudicated indefinitely is to fail in that duty.	8
IV. The APA imposes an independent duty on the Defendants to perform their nondiscretionary tasks in a timely fashion, with or without an explicit time frame specified within a specific law.	10
V. Mandamus is appropriate in the instant case; should the courts cease to grant mandamus in this and similar cases, USCIS and/or the FBI can keep a file open indefinitely, thus failing to perform their nondiscretionary duty without check.	14
VI. The courts have held that USCIS and the FBI have a non-discretionary duty to process an N-400 case in a timely manner.	15
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